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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,455	12/01/2000	Paul M. Yates	2711	2487

26822 7590 08/26/2004

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EXAMINER

MARSH, STEVEN M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/728,455

Applicant(s)

YATES, PAUL M.

Examiner

Steven M Marsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the sixth office action for U.S. Application 09/728,455 for a Cushion with Lubricated Particulates and Method of Manufacture filed by Paul M. Yates on December 1, 2000. Claims 4, 6-21, and 29-35 have been canceled.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, and 22-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In independent claims 1 and 22, Applicant claims that the core has "resilient characteristics of tri-block co-polymer elastomer utilizing a plasticizing oil. However, the resilient characteristics of tri-block co-polymer elastomer utilizing a plasticizing oil can vary, and therefore it is not clear exactly what Applicant is claiming.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-3, 5 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al in view of Voelker. Wolf et al. discloses a sheet cover (32) that is stretched and can be molded to a selected contour. The cover prevents leakage, has a backing (16), and there is a core disposed within the cover with an elastomer between the core and the cover. Wolf et al. does not

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specifically disclose the exact combination of particulates disposed within oil, but does disclose that a number of materials can be used, alone or in combination, for the core. Those materials include open or closed cell foam, liquid or particulate filled bags, or gels, which include oil.

Voelker discloses a cushion with a backing (23) and a cover (24) that is stretched over a selected contour. There is a core disposed within the cover, comprised of a volume of separate particulates, and an oil disposed between the particulates for enabling lubricated movement of the particulates with respect to one another in response to an outside force applied to the cover (see col.5, lines 53-58). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized the core taught by Voelker, in place of the core taught by Wolf et al., for the purpose of providing a core that provides the user increased comfort when using the pad. The particulates taught by Voelker are not made of open cell foam, however, Wolf et al. teaches that open cell foam can be combined with other materials, including oil, and it would have been obvious to one of ordinary skill in the art at the time of the present invention to have used open cell foam, as taught by Wolf et al., for the particulates in the core, as a means for providing increased comfort. Wolf et al. also discloses that plastic (a polymer) can be combined with the foam in the wrist rest (col.4, lines 58-64). Wolf et al. in view of Voelker does not specifically disclose liquid disposed within the particulates, but the liquid would be partially disposed within the particulates, due to the absorbing properties of open cell foam.

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***Response to Arguments***

Applicant's arguments with respect to claims 1-5 and 22-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*SM*

Steven M. Marsh

August 22, 2004

*Anita King*  
ANITA KING  
PRIMARY EXAMINER